

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MASSARO FAMILY LIMITED)	
PARTNERSHIP (PW TWO), a Pennsylvania)	
Limited Partnership,)	
)	
Plaintiff,)	CIVIL ACTION No. 00-1234
)	
v.)	
)	JUDGE LANCASTER
BAKER & TAYLOR, INC., a corporation,)	
)	
Defendant.)	
)	

MOTION FOR RELEASE OF DEPOSIT FUNDS

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, Rule 67.3 of the Local Rules of the United states District Court for the Western District of Pennsylvania, and an Order of Court dated February 2, 2004, Defendant, Baker & Taylor, Inc. ("Baker & Taylor"), by and through its counsel, hereby moves for the release, to Baker & Taylor, of the \$635,441.00 deposit paid by Baker & Taylor to the Court Registry on February 5, 2004 to stay execution of a judgment entered in favor of Plaintiff pending appeal, together with accumulated interest on that payment. In support of this Motion, Baker & Taylor states as follows:

1. On January 15, 2004, this Court issued a Judgment Order, which was entered on January 20, 2004, awarding damages to Massaro in the amount of \$496,923.00 plus interest in the amount of \$80,750.00 (the "Judgment").

2. On February 2, 2004, Baker & Taylor filed a Motion to stay execution of the Judgment pending disposition of an appeal.

3. On February 3, 2004, the Court issued an Order staying execution of the Judgment upon the deposit by Baker & Taylor of \$635,441.00 with the Clerk of Courts. The

Court furthered ordered the Clerk to deposit the money into an interest bearing account. A true and correct copy of the Court's Order is attached as Exhibit "A."

4. On February 6, 2004, Baker & Taylor filed a Notice of Deposit of Funds as Security for Stay of Execution, thereby providing the Court with notice that it deposited \$635,441.00 with the Clerk of Courts on February 5, 2004, pursuant to the Court's February 3, 2004 Order of Court. A true and correct copy of the Notice of Deposit of Funds as Security for Stay of Execution, including a copy of the receipt evidencing the deposit, is attached as Exhibit "B."

5. Baker & Taylor filed a timely Notice of Appeal to the Third Circuit Court of Appeals on February 17, 2004.

6. On December 15, 2005, the Third Circuit Court of Appeals entered its Opinion and Judgment with respect to Baker & Taylor's appeal. Among other things, the Court of Appeals reversed the District Court's Judgment and directed the District Court to enter judgment, as a matter of law, in favor of Baker & Taylor.

7. As a result of the Court of Appeals' ruling, Baker & Taylor has successfully defended against all of Massaro's claims, and Massaro is owed no damages.

8. Accordingly, Baker & Taylor requests that the Court order the release, to Baker & Taylor, of the \$635,441.00 in deposited funds, plus interest accumulated on the deposited funds, less the amount of interest to be retained by the Court to satisfy the handling fee set by the Judicial Conference.

9. In accordance with Local Rule 67.3, Baker & Taylor has provided the Clerk of Courts with a W-9 Taxpayer Identification and Certification form for Baker & Taylor. A true and correct copy of that form is attached as Exhibit "C."

10. Counsel for Baker & Taylor contacted the office of Massaro's counsel in an effort to determine whether Massaro intended to oppose this motion. Mr. Stein, however, is unavailable until January 16, 2006. It is respectfully requested that the Court take that into consideration in setting the date by which Massaro must respond to this Motion.

WHEREFORE, Baker & Taylor hereby requests that the Court order the release, to Baker & Taylor, of the \$635,441.00 in funds that Baker & Taylor deposited with the Court on February 5, 2004, plus interest accumulated on the deposited funds, less the amount of interest to be retained by the Court.

Respectfully submitted,

By: /s/ Anthony Cillo
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Attorneys for Defendant,
Baker & Taylor, Inc.

DATED: January 12, 2006
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2006, the foregoing Motion for Release of Deposit Funds, was filed with the Court electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system

/s/ Anthony Cillo
Anthony Cillo